

A Design of Appeal System with New Civilian Participation in Criminal Trials

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Judicial Reform Council recommended in its final report 2001 to introduce civilian participation in serious felony trials. In the new system civilians called *saiban*—in deliberate and decide with professional judges on guilt of the defendant and the penalty to be imposed. The civilians, having no term, are assigned one particular case. Legislation is expected in a few years to implement the system.

The Council recommended that under the new system both parties have the right to appeal on matter of facts as well as sentencing. However, details of the appeal system are still open.

The author proposes the appellate court be composed only with professional judges and review only decisions by professional judges. In order to make it possible, civilians and judges in the first instance should vote separately. When both verdicts are guilty, the defendant should be convicted. Otherwise the defendant should be acquitted. The prosecution or the defendant can appeal only against the verdict of professional judges. The appellate procedure is not a second trial but a review of the verdict.

The trial court with civilians must have certain discretion on sentencing. The appellate court should reverse the sentencing only when it is so improper that it is against the justice to affirm it.

Matters of law and procedure should be reserved for professional judges to decide under the new system. Appellate court can review decisions by judges on law and procedure.